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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**SEARS HOLDINGS CORPORATION, *et al.*,  
  
Debtors.**

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**OBJECTION OF GITLAB, INC. TO NOTICE OF ASSUMPTION AND ASSIGNMENT  
OF ADDITIONAL CONTRACTS**

GitLab, Inc. hereby files this objection (the “Objection”) to the Notice of Assumption and Assignment of Additional Contracts [Docket No. 3539] (the “Assignment Notice”). In support of this Objection, GitLab, Inc. states as follows:

**BACKGROUND RELATING TO THE BANKRUPTCY PROCEEDING**

1. Beginning on October 15, 2018 and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).
2. On November 19, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief [Docket No. 816].

3. On January 18, 2019, the Debtors filed the Successful Bidder Notice, which, among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., to acquire all or substantially all of the Global Assets, was the highest or best offer for the Global Assets. A copy of the asset purchase agreement between the Debtors and the Buyer (the “Asset Purchase Agreement”) is attached to the Successful Bidder Notice as Exhibit B.

4. On January 18, 2019, the Debtors filed the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”). Exhibit A to the Cure Notice identified executory contracts that may be assumed and assigned and the Debtors’ proposed Cure Amount.

5. Exhibit A to the Cure Notice identified one agreement with GitLab, Inc. as Contract No. 3123 (the “MSSA”). The MSSA had a proposed cure amount of \$33,938 (the “Cure Amount”). *See* Cure Notice, Exhibit A. GitLab, Inc. did not object to the Cure Amount.

6. On March 12, 2019, GitLab, Inc. filed Proof of Claim 9967 in that same amount, which GitLab, Inc. hereby incorporates into this Objection by reference.

7. On May 2, 2019, the Debtors filed the Assignment Notice. Exhibit 1 to the Assignment Notice identifies the MSSA as reference number 239.

8. Exhibit 1 to the Assignment Notice states that the Debtors’ asserted cure amount is “N/A” and that the cure amount has been resolved. This is incorrect, as GitLab, Inc. has not agreed to waive or reduce the Cure Amount.

### **OBJECTION**

9. GitLab, Inc. objects to the assumption and assignment of the MSSA.

10. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors may not assume and assign the MSSA unless the Debtors pay the Cure Amount.

11. The correct Cure Amount is the amount as set forth in the Debtors' own Cure Notice and GitLab, Inc.'s proof of claim. That amount has not been waived or reduced by GitLab, Inc.

12. GitLab, Inc. has been in communication with the Buyer and has been assured that the Buyer does not intend to take assignment of the MSSA. Counsel for GitLab, Inc. contacted Debtors' counsel with this information in an effort to avoid the need to file this Objection. As of the filing of this Objection, the MSSA has not been removed from Exhibit 1. Counsel will continue to work to resolve this Objection.

WHEREFORE, GitLab, Inc. objects to the assumption and assignment of the MSSA and respectfully requests that the Court (i) determine that the Cure Amount for the MSSA is no less than \$33,938 as set forth in the Cure Notice, (ii) deny the Debtors' request to assume and assign the MSSA to the Buyer, and (iii) grant to GitLab, Inc. such other and further relief as is just and appropriate.

Dated: May 10, 2019

**Mayerson & Hartheimer, PLLC**  
*Counsel to GitLab, Inc.*

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- and -

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